

13th August 1954] [Mr. Chairman]

(5) Sri M. P. Govinda Menon.

(6) Sri K. Bhashyam.

(7) Sri S. Narsapaya.

(8) Sri Mohamed Raza Khan.' "

The motion was carried.

IV.—GOVERNMENT BILL.

THE MADRAS HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS
(AMENDMENT) BILL, 1954 (L.A. BILL NO. 27 OF 1954)—*cont.*

Clause 11.

MR. CHAIRMAN :—" The motion is—

' That Clause 11 do stand part of the Bill.' "

* SRI K. BALASUBRAMANYA AYYAR :—" Mr. Chairman, Sir, I beg to move the amendment standing in my name that—

' For Section 55, the following shall be substituted :—

" 55. The trustee of a math shall be entitled to spend the ' pathakanika ' that is to say, any gift of property made to him as the head of the math in accordance with the customs and usages of the institution." "

DR V. K. JOHN :—" Sir, I second the amendment."

MR. CHAIRMAN :—" Amendment moved—

' For Section 55, the following shall be substituted :—

" 55. The trustee of a math shall be entitled to spend the ' pathakanika ' that is to say, any gift of property made to him as the head of the math in accordance with the customs and usages of the institution." "

* SRI K. BALASUBRAMANYA AYYAR :—" Mr. Chairman, Sir, the point that I wish to make is that, when this section 55 was considered by the Supreme Court, they were of opinion that the Mahant had absolute power of disposal over ' pathakanikas ' or personal gifts and that they were his personal property. The madathipati in the South is known as the Mahant in the North. Though the Mahant had absolute power of disposal over ' pathakanikas ', if he dies without making a disposition or spending them, they go to the succeeding person. This phenomenon does not make the ' pathakanika ' any the less the personal property of the Mahant because according to Hindu law, if a *sanyasi* or any other religious person who does not belong to the ordinary life of the community dies possessed of property, the chief disciple chosen by him will always inherit the property. It is only because this principle of Hindu law is applied to all religious endowments that the succeeding Mahant inherits the personal property if his predecessor dies without making any disposition.

" The fact that in the event of a Mahant's death, his successor got these *pathakanikas* does not confer on such *pathakanika* properties the character of the properties of the math. The position

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of the madathipati is clear. He is not strictly a trustee in the general sense of the term according to the English law and that has been made clear by many decisions of the Privy Council and our High Courts. So far as the properties of the maths are concerned, the heads of maths cannot alienate. So far as the income from the properties of the maths are concerned, the heads of maths have got absolute powers of disposal, subject only to one condition, namely, 'that they cannot spend anything out of it for their personal use unconnected with the dignity of their office'. With regard to *pathakanikas* a madathipati has got absolute powers of disposal. These *pathakanikas* are given by disciples to their spiritual gurus. According to Hindu tradition, when a person approaches a deity or his *guru*, he should not go empty-handed and he must carry with him some kind of present or other. Whenever we go to a temple we go taking fruits and coconuts. Similarly when we visit our spiritual *gurus* we also present them *pathakanikas*. *Pathakanikas* may be in cash or in kind. It may be rice or fruits. *Pathakanikas* do not mean cash or Government securities or promissory notes only. Sometimes cash is also presented by the disciples. There are two points to be considered when we deal with *pathakanikas*. The first point is with regard to the personal right of the madathipatis and the second point is with regard to the feelings of the disciples who offer *Pathakanikas*. I want to represent before this House the feelings of disciples who offer *pathakanikas* to their spiritual *gurus*. Whenever a disciple offers *pathakanika* to his spiritual *guru* it is his opinion and impression that his *guru* can spend it as he pleases. He has got absolute confidence in his spiritual *guru* that he will use it in the best interests of his religious denomination. He does not entertain any doubt regarding the accountability of the gift. He does not care how he spends the amount. I have also given *pathakanikas*. I do not care how these *pathakanikas* have been spent because I have got absolute faith and confidence in my *Guru*."

AN HON. MEMBER:—"Have you ever received *pathakanikas*?"

* SRI K. BALASUBRAMANYA AYYAR:—"Unfortunately I am not a madathipati. (Interruption from the Treasury Bench: 'You may become one.') I will consult the Hon. Chairman about this particular matter when the time comes. He is my personal friend and he will advise me when the time comes. My submission, Sir, is that if *pathakanika* is considered as the property of the *mahant* there is no justification for compelling him to keep accounts of receipts and expenditure. It is argued that keeping accounts of receipts alone is not a burdensome restriction. The Supreme Court have stated in their judgment as follows:—

"If *Pathakanikas* constitute the property of a *mahant* there is no justification for compelling him to keep accounts of receipts and expenditure of such personal gifts . . ."

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Even according to the Income-tax Law, we are bound to keep accounts. Only if we do not keep accounts, we have got to pay whatever is demanded by the Income-tax authorities. Any Statute which compels a person to keep accounts as regards his personal property, I submit before this House, is a burdensome restriction. That has been the view that has been taken by the Supreme Court. Therefore I feel that this section will affect the fundamental rights of the madathipatis as decided by the Supreme Court. Therefore, it is, I am bringing forward this amendment."

* SRI G. KRISHNAMOORTHY :—" Mr. Chairman, Sir, I heartily support the amendment moved by the hon. Member Sri K. Balasubramanya Ayyar. This Bill is trying to bring the madathipatis down in the eyes of their disciples and their followers and the general public. If at all there is anything which recognizes the prerogatives of the madathipatis it is the offering of *pathakanikas*. The *pathakanikas* are generally used by madathipati then and there. It is something like a medium to get money from the people who can afford to pay and distribute it to people who have no food and clothing, and this is being done by madathipatis. If an account of receipts alone is demanded from madathipatis then difficulties will arise, as was pointed out by the hon. Member Sri K. Bhashyam yesterday. A madathipati might have accumulated a large amount by way of receipts from *pathakanikas*, or might have spent the entire lot. If a *madathipati* who has spent the entire receipts from *pathakanikas* attains *samadhi* his successor will find himself in difficulty because he cannot account for all the receipts of *pathakanikas* by his predecessor. So, I just beseech hon. Members of this House to accept the amendment of hon. Member Sri K. Balasubramanya Ayyar."

* SRI A. GAJAPATHY NAYAGAR :—" கனம் மன்றத் தலைவர் அவர்களே, மதிப்பிற்குரிய நண்பர் ஸ்ரீ பாலசுப்ரமணிய அய்யர் அவர்கள் கொடுத்திருக்கும் திருத்தத்தை எதிர்க்கிறேன். மடாதிபதிகளுக்கு உண்மையாகவே பாதகாணிக்கை வந்தால் அதை அவர் இஷ்டப்படி செலவு செய்யலாம். ஆனால் மடத்து சொத்துக்களை பாதகாணிக்கையாக மாற்றுவதை ஒப்புக்கொள்ளமுடியாது. இதை நான் முன்பே சொல்லியிருக்கிறேன். மடத்துக்குச் சொந்தமான எஸ்டேட்டிலிருந்து பத்தாயிரம் ரூபாய் குத்தகைப் பணம் வருமென்றால் 6 ஆயிரம் ரூபாய்க்கு அதை தனக்கு வேண்டியவருக்கே குத்தகைக்கு விடுவார்கள். குத்தகைதான் இன்னும் ஒரு இரண்டாயிரம் ரூபாயை பாதகாணிக்கையாக மகாசன்னி தானத்திற்கு கொடுப்பார். அப்படிக் கொடுத்தும் அவருக்கு ரூபாய் இரண்டாயிரம் வரப்பிரக்கும். இப்படி மடத்து சொத்து பாதகாணிக்கையாக மாற்றப் படாமலிருப்பதைக்கண்காணிக்கத்தான் எவ்வளவு பாதகாணிக்கை வந்தது என்று கணக்கு கேட்கப்படுகிறது. இது தவறாகாது. மடத்தின் வருமானம், செலவு போன்ற எல்லாவற்றிற்கும் சரியான கணக்கு இருந்தால்தான் பணம் துர்வினியோகம் ஆவதைத் தடுக்க முடியும். ஆகவே சர்க்காரின் யோசனையை நான் மனமார வரவேற்கிறேன்."

* SRI K. BHASHYAM :—" Mr. Chairman, Sir, this is one of those sections which is somewhat intriguing. I wish to point out that this is an instance where the Government are trying to

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respect the judgment of the Supreme Court in some matters only and are trying to get round the judgment by adopting the device of saying 'The trustee of a math shall keep regular accounts of receipts of *pathakanika*'. The Government have used the word 'device' so far as the madathipatis are concerned, but I want to use the word 'device' so far as the Government also are concerned. The judgment of the Supreme Court says that *pathakanika* is the absolute property of the madathipati and that he is not bound to keep an account of the receipts and expenditure. The new Section that is proposed requires that an account should be kept only of the receipts. To say that the Government insist upon the maintenance of an account only so far as the receipts are concerned and not so far as the expenditure is concerned is an argument which I would call only as absurd. But the Government want to persist in their attitude. Even the question of asking the madathipati to keep an account of the receipts only so far as the *pathakanika* is concerned is a matter which is detrimental to the affairs of the madathipati himself. There is the agent and there is the treasurer and if some of the receipts do not find a place in the accounts, they will be charged. In regard to income-tax if one maintains an account, it is something advantageous to him. But, if we impose such a statutory obligation on the madathipati and, if to-morrow he neglects to keep an account of the receipts, the failure to maintain an account will be a ground for his dismissal because the madathipati is violating the statutory provision. Certainly it would be better if the madathipati keeps an account and keeps it honestly. Every self-respecting madathipati will do it. An instance was quoted by the hon. Member Sri Gajapathy Nayagar. He said that in a particular case, out of an income of Rs. 6,000, only Rs. 2,500 was brought into account and the balance was appropriated by the madathipati and that it went into his pockets—I am sure he has no pocket. How did the Government find this out when there was no statutory provision? Even in ordinary cases of criminal breach of trust or embezzlement of public money, how do we get at the information? Does the person charged keep an account? It is only through investigation that we find it out. Therefore I say it is an unnecessary and a humiliating provision. I would rather wish that this provision is omitted. It is humiliating to ask the head of math to maintain an account for such receipts. I appeal to the Government that in the case of religious denominations it is better we leave the matter to the denominations concerned. If there are irregularities, it is open to them to file a complaint and take the matter to a Court.

"I also wish to point out some slight mistakes in the matter of drafting. It is said 'any gift of property made to him as the head of the math'. He is there as the head of the math because of his personal qualification. The expression 'head of the math' is itself wrong. *Pathakanika* is offered to the guru in his capacity

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as *guru* in respect of personal teaching of the *guru* to the person concerned. It is not on every day that a madathipati gets *pathakanika*. It is only when initiation takes place or some blessings are given or some *mantrams* are taught that *pathakanikas* are given, not in his capacity as head of the math, but in view of the personal relationship of *acharya* and *sishya* and in view of his personal qualification. No doubt, there are certain ceremonies attached to the madathipati as head of the math. Therefore, to say that the *pathakanika* is given in his capacity as head of the math is itself wrong. It is a contradiction in terms and it is not at all correct. So, it is a question of personal qualification and personal relationship between the *acharya* and the *sishya*.

“Then, I want to refer to one other matter. It is said that the madathipati shall be entitled to spend the *pathakanika* in accordance with the customs and usages of the institution. Suppose there is no custom at all in a particular institution to have a *sathas* or assembly of Pandits for the purpose of discussing some religious matters. The holding of such a *sathas* has not been there either as a custom or usage. Is it not open to the madathipati to incur expenses in connexion with the assemblage of persons for the purpose of fostering and encouraging some religious literature? The madathipati may want to introduce a new custom. He may be a progressive man. The math may not have done it so far. It is a progressive matter. Is it wrong to do so? So, such a restriction would prevent a progressive madathipati from spending the *pathakanika* on any new innovation he might think fit to introduce. How then can it be said that the Government are following the judgment of the Supreme Court? It is against the letter and spirit of the judgment. There is no good getting round the judgment by some sort of a verbal quibble in the matter or drafting. If we really follow the judgment of the Supreme Court, let us follow it fully, sincerely and without any reservation. I would strongly appeal to the Government to see that this restriction is not put there. There are so many ways of correcting things. As a head of the religious institution we must give him the respect that he is entitled to, because of the position he holds. If such restrictions are put, it will bring down the prestige of the madathipatis in the eyes of the public. I know that the Government are amenable to good suggestions and I hope they will accept my suggestion. These things may be taken up for consideration when the comprehensive Bill is brought up. Let us not have a controversial measure.”

SRI V. CHAKKARAI CHETTY :—“Sir, I do not follow exactly the argument of the hon. Member Sri Bhashyam. He is a great lawyer. I wish the hon. Member to make the points more clear.”

* SRI K. BHASHYAM :—“Well, if the Hon. Chairman allows me, I will do so.”

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* SRI T. M. NARAYANASWAMY PILLAI :—“ Sir, I want to think aloud in the matter. My hon. Friend, Sri V. Chakkarai Chetty said that he is not able to follow the argument of the hon. Member Sri K. Bhashyam. I can repeat it to the extent to which I have followed him.

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p.m.

“ His objection to this clause is that the provision requiring the head of a math to keep regular accounts of *pathakanika*, though of receipts alone, will be a restriction on the powers of the madathipati. In justification of his position, he cited an instance where a madathipati may like to give presents to learned Pandits and pointed out that this clause would stand in the way of his doing so. He said that giving presents to learned Pandits might not be the practice in a particular institution and any such expenditure by a madathipati would not bring it within the usage of the institution. That is exactly where I am not able to follow him. Assuming what he said to be correct, what is the connexion between the keeping of accounts of receipts alone and the madathipati's right to spend the funds of the math or the '*pathakanika*' either according to the usage or without reference to it? As I understand the judgment of the Supreme Court, it seems to me that the '*pathakanika*' is not always a gift made to the madathipati and it is governed by the usage of the institution. Where it is the property of the math according to the usage of the institution, it will be the property of the math and will have to be spent according to usage like any other math properties. Where it is not the property of the math according to the usage, the madathipati has the absolute right over its disposal. Where it is the absolute property of the madathipati, on his death, it invariably becomes the property of the math. Therefore the question is this :—‘ Having regard to the law as stated above, is it illegal to require the madathipati to keep accounts of the receipts of *pathakanika*? ’ In this connexion, I should like to refer to Section 20 of The Hindu Religious and Charitable Endowments Act of 1951. The other day I read the judgment of the Supreme Court in regard to Section 20. The Supreme Court does not say that he is not a trustee in any sense; if it has said so, it would be a different matter but it has not been so stated and Section 20 of the Act of 1951 has been declared valid by the Supreme Court. That means that the math is a public institution and the properties of the math are to be appropriated according to the intentions of the original founders and the usages of the institution and they should not be wasted. Therefore, some kind of obligation is attached to the office of the trustee of a math. No doubt, he has considerable dominion over the income of the property, but it cannot be said that he is the absolute owner and his right is unquestionable. It is only in recognition of this fact that Section 20 of the principal Act was not declared invalid by the Supreme Court. Fortunately, there is also Section 27 under which the trustee of a religious institution is required to furnish to the Commissioner

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such accounts, returns, reports or other information relating to the administration of the institution, its funds, property or income or moneys connected therewith or the appropriations thereof. The words are wider. Therefore, we cannot say that the necessity to keep accounts of receipts has no bearing at all on the administration and has no connection with it and it is necessary that the madathipati, in pursuance of the obligations attached to a public institution, has to keep accounts. Nobody questions his right of absolute disposal if it is his property according to the usage.

"Sir, there are maths and madathipatis; I do not want to make a secret of it when I say that whenever I go to these maths, I generally prostrate before the madathipatis. That reverence and regard we must of course pay them; but, at the same time, we cannot forget their obligations to the public, they being the trustees of institutions of a public character in the larger sense of the term. My hon. Friend invoked the growing consciousness of the public in the matter of giving '*pathakanika*' now. In my opinion that growing public consciousness expects the madathipatis to act as trustees for the benefit of the public; they must also feel the obligations they owe to the public.

"Sir, would not the provision requiring madathipatis to keep accounts of receipts of '*pathakanika*' go a long way in finding out whether the income of the property which undoubtedly belongs to the institution has been properly received and appropriated? Suppose there is an income of Rs. 50,000 from immovable properties admittedly belonging to the math and instead of crediting the whole amount to the math, one can take it into his head to divide it into two parts and credit Rs. 15,000 towards '*pathakanika*' and Rs. 35,000 to the math to be used according to the usages of the institution. Therefore, the crediting of Rs. 15,000 towards '*pathakanika*' can be detected if they keep accounts of receipts of '*pathakanika*'. It appears that devices of the type are being actually adopted. Thus we can really find out whether the alleged contribution of some '*pathakanika*' belongs to the math or to the madathipati. Sir, if it is a kind of restriction upon his powers of disposal, the objection to this clause may be well-founded but so long as it is not a burden or a restriction upon his power of disposal, no objection can be taken to it."

* SRI K. BHASHYAM :—"On a point of personal explanation, Sir. The previous speaker has misunderstood me when I was referring to the clause 'in accordance with the customs and usages of the institution'. I wanted that this clause should not be connected with the question of accounts at all. There are two things mentioned in Section 55 introduced in this Clause. One is how to keep accounts and the other is how the amount is to be spent which is also laid down in that section. It is not as if this section allows the madathipati to use the amount as he likes. It

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says that he 'shall be entitled to spend the "*pathakanika*" in accordance with the customs and usages of the institution'. Therefore, I was misunderstood by my hon. Friend Mr. Narayanaswami Pillai, when he said that I wanted to connect one thing with the other. Sir, the disposal of the '*pathakanika*' is also sought to be provided for in this section. I say, it is not correct to do so and it is not in accordance with the judgment of the Supreme Court."

* THE HON. SRI B. PARAMESWARAN :—" Mr. Chairman, Sir, both Mr. Balasubramanya Ayyar and Mr. Bhashyam took objection to the provision relating to the keeping of accounts of receipts of '*pathakanika*'. Sir, it is necessary to see that the receipts of the properties of religious institutions do not at any time or at any stage get mixed up with the receipts from '*pathakanikas*', as they are intended for the purpose of the math and for which the madathipati has to account for. Again, '*pathakanika*' may form part of the assets of the math on the death of the trustee of the math. As observed by the Supreme Court, it will be in the interest of his successor; the math and his disciples to see that no portion of the receipts is frittered away or lost during the period of interregnum, that is between the death of the trustee and the assumption of charge by another, which usually happens. The discretionary right of the trustee to spend the '*pathakanika*' in accordance with the customs and usages of the math is not at all fettered or interfered with and it is left to his responsibility. But, at least in the interest of the trustee himself, we should know what amount of '*pathakanika*' he has got, so that he may regulate his expenditure. Therefore, it is necessary in the interests of both the trustee and the institution that he should keep accounts of receipts of '*pathakanika*'. Further, the Supreme Court did not say that it would be an unreasonable restriction on his powers in relation to the '*pathakanika*' if we ask him to maintain accounts of receipts. As pointed out by Mr. Narayanaswami Pillai, whenever a doubt arises as to the purpose for which a particular gift was given and when we are not certain whether the gift was given as '*pathakanika*' or for any other purpose, it is better that we have accounts of these receipts so that we may know it for certain for which particular item a gift has been made. Therefore, I oppose this amendment."

4 p.m. * SRI K. BALASUBRAMANYA AYYAR :—" Mr. Chairman, Sir, the mere fact that a receipt is given will not prove that a gift is a '*pathakanika*' or not. It is a question of fact. Then power must be given to the Commissioner to enquire in each case whether it is a '*pathakanika*' or not. Have the Government given such powers to the Commissioner? Suppose a madathipati gives a receipt for '*pathakanika*'. How is this going to answer the wonderful case referred to by an hon. Member where a madathipati was said to have converted other gifts also into '*pathakanikas*'? Unless enquiries are made as to whether a gift was

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given as a '*pathakanika*' or not, it is difficult to prove it. In each case, it is a question of fact. Mere arguments would lead to nothing. The Commissioner must be given the power to enquire whether the receipts represent '*pathakanikas*'. As a matter of fact, we must enquire the disciple who gave it, whether he gave it as a '*pathakanika*' or not. If, without these powers, the Commissioner goes acting on suspicions, etc., it will be a dangerous thing and it would be exhibiting tyranny which the Supreme Court wanted to prevent. This will not be a proper thing to do and the Commissioner should be given the necessary power to make enquiries. Such power, I think, has been given in the section regarding removal of hereditary and non-hereditary trustees. When this power is already there, why should we require receipts for '*pathakanikas*'? I do not think it will prevent any abuse on the part of the madathipati."

MR. CHAIRMAN :— "The question is—

'For section 55, the following shall be substituted :—

"The trustee of a math shall be entitled to spend the '*pathakanika*', that is to say, any gift of property made to him as the head of the math in accordance with the customs and usages of the institution."

The amendment was lost.

Clause 11 was put and carried.

Clauses 12, 13 and 14 were put and carried.

Clause 15.

MR. CHAIRMAN :— "The motion is—

'That Clause 15 do stand part of the Bill.'

* SRI K. BALASUBRAMANYA AYYAR :— "Mr. Chairman, Sir, this is rather a difficult Section (Section 76) and I would like to take little time over it in spite of the fact that you, Mr. Chairman, are anxious to finish the whole thing. Sir, I may be speaking a little faster and I hope, Sir, you will put up with my shortcomings if there is anything. In two cases the Supreme Court have given their decision in regard to the question whether this contribution for the services rendered by the Government is a fee or not. We have to read these two cases to understand the whole position. So far as the Madras Hindu Religious and Charitable Endowments Act, 1951, was concerned, this question came up before the Supreme Court in the Shirur Math case. I think we had the clause 'in consideration of the services rendered by the Government' in the old Act of 1927 and in Section 76 of the Act

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of 1951 there is a clause in respect of the services rendered by the Government.' But, in spite of this, let us see a little carefully what the Supreme Court says :

' Section 76 of the Madras Act speaks definitely of the contribution being levied in respect to the services rendered by the Government ; so far it has the appearance of fees.'

Then the Supreme Court judgment goes on to discuss the difference between a fee and a tax. So far as the State Government are concerned, they have no power to levy a tax. Only the Centre has got this power. But, so far as the levy of a fee is concerned, the Madras Legislature has got the power. The Supreme Court have set out the various considerations and said :

' These are undoubtedly some of the characteristics of a " tax " and the imposition bears a close analogy to income-tax. But the material fact which negatives the theory of fees in the present case (Section 76 of the 1951 Act) is that the money raised by levy of the contribution is not earmarked or specified for defraying the expenses that the Government has to incur in performing the services. All the collections go to the Consolidated fund of the State and all the expenses have to be met not out of these collections but out of the general revenues by a proper method of appropriation as is done in the case of other Government expenses.'

Now, this is sought to be remedied, by the proposed new Section 81 (2) introduced under Clause 16 of the Bill. The mere fact that we change the procedure and create a Charitable Endowments Administration Fund instead of remitting the contributions into the Consolidated Fund of the State, does not make it conclusive. Even when the collections were credited entirely to the Consolidated Fund of the State, the Supreme Court have said :

' That in itself might not be conclusive, but in this case there is total absence of any co-relation between the expenses incurred by the Government and the amount raised by contribution under the provision of Section 76 and in these circumstances the theory of a return or counter-payment or *quid pro quo* cannot have any possible application in this case. In our opinion, therefore, the High Court was right in holding that the contribution levied under Section 76 is a tax and not a fee and consequently it was beyond the power of the legislature to enact this provision.'

Even though Section 76 of the Act of 1951 said that in consideration of the services rendered by the Government, the Government proposed to levy a contribution at such and such a rate, the Supreme Court remarked that the fact that these contributions were credited to the Consolidated Fund of the State was by itself not conclusive and said that in this case there was a total absence of any co-relation between the expenses and the amount raised by the contribution. They said so because the Supreme Court was apprised of the fact that there were forty lakhs of rupees as surplus and they therefore said that there was a total absence of any co-relation between the services rendered and the amount collected. It is this fact that has been made conclusive and not the fact whether these contributions were credited to the Consolidated

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Fund of the State and appropriated in budgets according to rules of appropriation. This, I submit, Sir, is the test that has to be applied so far as our legislation is concerned.

Now, what the Judicial Officers of the Government have advised the Government and what the Government have done is this. As regards the Orissa Act, the Supreme Court discussed the same question and decided that the contribution levied by Section 49 of the Orissa Act was to be regarded as a fee and not a tax. The Supreme Court said :

'The payment is demanded only for the purpose of meeting the expenses of the Commissioner and his office which is the machinery set up for due administration of the affairs of the religious institution. The collections made are not merged in the general public revenue and are not appropriated in the manner laid down for appropriation of expenses for other public purposes.'

There are two elements in this but the conclusive thing is about the co-relation between the services rendered and the expenses incurred by the Government which has been made clear by the Supreme Court's judgment in the Shirur Math case. Applying these remarks of the Supreme Court in the Shirur Math case to the present Bill before the House, merely because it is laid down that in respect of the services rendered by the Government these religious institutions shall pay a contribution not exceeding five per centum of their income and that a separate Charitable Endowments Administration Fund is to be created, does not take the contribution out of the category of a tax. We have therefore to see that there is co-relation between the services rendered and the amount collected. The question now is, how is this to be achieved? It is only in order to help the Government that I have brought forward this amendment and not as a sort of criticism of the Government at all. My object is only to see that the contribution is levied according to law and that it is not questioned again in a Court of law. I therefore want to suggest that in the proposed sub-section (1) of Section 76, after the words 'such contribution' the following be substituted for the words 'not exceeding five per centum of its income as may be prescribed', namely, 'at such rate as may be prescribed by him in proportion to the services rendered to the institution'. This will be in addition to the general statement 'In respect of the services rendered by the Government and their officers ' with which this sub-section begins. It will not be a very difficult thing to work out the contribution in proportion to the services rendered. The Commissioner and his officers can always assess the contribution at the rate not exceeding 5 per centum of the income. There are some rules with regard to collection of fees which are applied in the case of services like inspection and checking of accounts, preparation of budgets, rendered by the Government to all institutions. These rules may also be applied in the case of levying contributions on all religious institutions generally. The Government may also charge additional fees for services rendered specially in cases of religious institutions which have been maladministered and which have

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been found to be working not properly. The Government or the Commissioner can have powers to assess the value of services rendered in special circumstances. Sir, I want also to add the words 'not exceeding 5 per centum of its income' after the words 'at such rate as may be prescribed by him in proportion to the services rendered to the institution' given in my amendment. Section 76 (1) as amended will read thus :

'In respect of the services rendered by the Government and their officers and for defraying the expenses incurred on account of such services every religious institution shall, from the income derived by it, pay the Commissioner annually such contribution at such rate as may be prescribed by him in proportion to the services rendered to the institution not exceeding 5 per centum of its income.'

"I have also given another amendment that the rate of contribution shall be 3 per cent and not 5 per cent. In the other House an amendment was moved that it might be raised to 7½ per cent. Even with the 3 per cent contribution the Government have been able to accumulate a large surplus. It only shows that a contribution of 3 per centum is fairly good. If Section 76 is amended as suggested by me, there will not be any difficulty in working it out and we can also be free from any litigation.

"So, I move that :

'In the proposed new sub-section (1) of Section 76, after the words "such contribution" occurring in lines 5 and 6, add the words, "at such rate as may be prescribed by him in proportion to the services rendered to the institution not exceeding 5 per centum of its income".'

* SRI T. M. NARAYANASWAMY PILLAI :—"Mr. Chairman, Sir, I beg to second the amendment. My hon. Friend, Sri K. Balasubramania Ayyar has made it very clear that his object in moving the amendment is to help the Commissioner and his staff. Personally I should have objected even to the words 'in respect of the services rendered by the Government and their officers' and should have liked to put in the words 'in respect of the services rendered by the Commissioner and his staff'. The language adopted in this section is different from the language adopted in Section 69 of the old Act of 1927 introduced by the late Raja of Panagal. That section stated something to the following effect. 'Every religious institution shall pay annually to the Board for meeting the expenses of the Board . . .'. This section is very clear and specific. Anyhow, I do not want to press my views. I would urge upon the Government the desirability of passing Section 76 (1) after adding the words mentioned by my hon. Friend Sri K. Balasubramania Ayyar.

"Section 49 of the Orissa Public Trust Act which has been considered to be valid by the Supreme Court is analogous to Section 76 (1) introduced in Clause 15 of our Bill. I wish to state that this point should not be used as a ground for not accepting the amendment. It must be understood clearly that, though Section 49 of the Orissa Act suggests a flat rate of contribution,

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still the fact was that a separate fund was constituted on the very date that Act came into force and the collections made were not merged in the general public revenue. It was these two points that enabled the Supreme Court to come to a decision that Section 49 was valid. In the Madras appeal the Supreme Court held that the contribution levied under Section 76 was a tax and not a fee. All the collections made went to the Consolidated Fund of the State, all the expenses were to be met not out of these collections but out of the general revenues and lastly there was a total absence of any co-relation between the expenses incurred by the Government and the amount raised by contribution and consequently the Supreme Court held that it was beyond the power of the State Legislature to levy it. Now we are very anxious that the Religious and Charitable Endowments Administration should not be handicapped in the future on account of suits filed in the Supreme Court or High Court. Sections relating to taxation are always very strictly interpreted and we should see that they do not contain any point to which objection can be taken. According to the amendment suggested by the hon. Member Mr. K. Balasubramanya Ayyar the maximum leviable contribution will continue to remain as 5 per centum. That is also what is wanted by the Government. By accepting the amendment the Government can make it appear as though they have considered the matter and are levying a contribution in proportion to the services rendered. I have already mentioned yesterday that in the old Act of 1927 the late Raja of Panagal levied a fee of 3 per centum in respect of temples and $1\frac{1}{2}$ per centum in respect of maths. I know that a contribution of $1\frac{1}{2}$ per centum in respect of maths will not be enough now, in the altered circumstances. It may be necessary to raise the rate. The amendment suggested by the hon. Member Sri K. Balasubramanya Ayyar does not prevent the Commissioner from fixing it at 3 per centum for maths and at 4 per centum for temples. I am glad that the hon. Member Sri K. Balasubramanya Ayyar has given up the idea of lessening the rate of contribution. I know, as a matter of fact, that the Religious and Charitable Endowments Administration was handicapped in the past for want of funds. The inspectorate must be very much strengthened. Funds are also required for effecting improvements in other directions also, if the Commissioner is expected to satisfactorily discharge his duties to the public. The amendment will not in any way handicap the Government because the maximum is that which has been required by the Government. Therefore I second the amendment.

“ While I support Sections 76 (1) and 76 (2) proposed in sub-clause (1) of Clause 15, I do not approve of Section 76 (5) proposed in sub-clause (2) of Clause 15. This Section 76 (5) reads as follows :—

“(5) Whenever there is any surplus after meeting all the charges referred to in the foregoing sub-section, it shall be lawful for the Commissioner, acting

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suo motu or on an application to make grants to poor and needy religious institutions for carrying out repairs and renovation subject to such rules as may be framed by Government in this regard.

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"This sub-section enables the Commissioner to make grants to poor and needy religious institutions. This was introduced during the discussion of the Bill in the other House at the last moment. The substance of this section was considered at the Joint Select Committee meeting and the Government then thought that the matter might lie over for the time being and might again be considered at the time when a comprehensive Bill was brought up. I am not against the view of the Commissioner or the Government and I am not lagging behind them in trying to help poor and needy religious institutions. Contributions are collected by the Government for a definite purpose. They are in the position of a trustee. Now, if they divert the funds for some other purpose, however laudable it may be, it will be contrary to the provisions of the trust and it will be something like the 'veli' (fence) coming and eating the 'payir' (crop). By introducing this sub-section, the Government are giving a handle to those who want to attack the section and they will go to the court and say, 'The Government are collecting more than they need. Therefore what they are levying is a tax and not a fee for services rendered'. There is still time to consider this matter. We are very anxious to see that this section is not taken to the court. I am sure that if this sub-section (5) is allowed to remain, it will be open to attack and perhaps successfully in the High Court. It is not as though the Government are afraid of anybody in the matter. But it has to be noted that the Government do not satisfy the reasons mentioned by the Supreme Court. I would earnestly request them to drop sub-section (5) as introduced by this clause and accept the amendment moved by Sri K. Balasubramanya Ayyar."

MR. CHAIRMAN :—" Amendment moved—

'In the proposed new sub-section (1) of Section 76, after the words "such contribution" occurring in lines 5 and 6, add the words "at such rate as may be prescribed by him in proportion to the services rendered to the institution not exceeding 5 per centum of its income".'

* SRI K. BHASHYAM :—" Sir, this is a matter which relates to the imposition of a contribution upon the various institutions in respect of the services rendered by the Government. I am for it. We have to ensure the superintendence of these institutions so that they may function properly. I agree with that. But how to levy and collect the contribution is the question. If it is a question of tax, the Government have no power to levy it. If it is a question of fee, it must be something like a licence fee, that is, it must just meet the expenses. Therefore, Sir, even the amendment moved by the hon. Member Sri K. Balasubramanya Ayyar may not be effective to protect the section from attack.

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[Sri K. Bhashyam]

What I wish to point out is this. All the contributions are put together and consolidated into a fund and the whole expenses of the department are being met out of it. Suppose, a big temple spends its income properly, the Commissioner has no necessity to visit the temple. There is no inspection of the temple and no service is rendered to that institution. It is open to the head of such an institution to argue 'I am paying not for my institution but for services rendered to other institutions'. The Government might well say that the institution will have to pay like that. It is open to attack in that way. So, even after accepting the amendment, the section is open to attack. Let the Government be cautious in accepting the amendment."

* SRI A. GAJAPATHY NAYAGAR :—“கனம் மன்றத் தலைவர் அவர்களே, மடங்களிடமிருந்தும், கோவில்களிடமிருந்தும், அவைகளின் பரிபாலனத்திற்காக வசூலிக்கப்பட்ட தொகை 3% ஐ fee அல்லது tax என்று சொல்லி செல்லுபடியாகாது என்று சப்ரீம் கோர்ட் சொன்னதன் காரணமாக இதை ஒரு fund-ஆகச் சர்க்கார் செய்ததை நான் வரவேற்கிறேன். கோவில்களையும், மடங்களையும் சீர்திருத்தவேண்டியது நம் சர்க்காரின் பொறுப்பு. 3% வசூலித்தபோதே ரூபாய் 40 லட்சம் மீதம் ஏற்பட்டிருக்கும் போது அதை ஏன் 5%-ஆக உயர்த்தவேண்டுமென்று நண்பர்கள் சொல்லுகிறார்கள். ரூபாய் 40 லட்சம் மிச்சம் ஏற்பட்டால் சரியாக வேலை செய்யவில்லை யென்றுதான் அர்த்தம். சரியாக வேலை செய்தால் இந்த 5% -ம் போதாது. ஆகவே சர்க்கார் கொண்டுவந்திருக்கும் சீர்திருத்தத்தை ஆதரிக்கிறேன்.”

* THE HON. SRI B. PARAMESWARAN :—“Mr. Chairman, Sir, the hon. Member Sri Bhashyam himself has pointed out that the amendment brought forward by the hon. Member Sri K. Balasubramanya Ayyar is open to question in a Court of law. Therefore, I suggest that the modest amendment brought forward by the Government itself may be accepted. The contribution to be collected from the various institutions cannot be fixed in proportion to the services rendered to the institution by the Government as it will not be practicable to assess how much the institution has derived from the officers and servants of the Board. Reference was made to the Orissa case which was taken on appeal to the Supreme Court. There, I think, a greater levy of contribution has been held valid by the Supreme Court. The object of this amendment can be better achieved if the rules to be framed under the Act are well framed. The Commissioner will also be given powers to reduce the rate of contribution or to remit any portion of the contribution as he may deem it necessary. Hence I do not think there is any need for this amendment at all. Therefore I oppose the amendment of the hon. Member Sri K. Balasubramanya Ayyar.”

* SRI K. BALASUBRAMANYA AYYAR :—“Sir, the point that is made by the Hon. Minister is that the services rendered to the institution cannot be evaluated in the case of each institution. I am not an administrator and therefore I do not know the details. Still, I can visualize and mention that there are some general services rendered to all institutions, namely, inspection of

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the temples, scrutinising budgets, etc. Of course, auditing the accounts is a separate matter. So, some general evaluation can be made in respect of such services rendered to all institutions. Of course, there are some particular institutions which require to be administered with greater care and which involve frequent inspections and it may be that some special officers will have to be appointed at times. There may be institutions where acts of breach of trust or maladministration may be reported. They may require special services. Only an approximate evaluation is possible. We cannot evaluate the services on the basis of the salary of each individual. What the Supreme Court meant was that if there was any surplus after looking into all these things, it amounted to a tax. Unfortunately, the powers of the Central Legislature and the State Legislatures are in question. The word 'fee' is used here and the word 'tax' is used there. We have necessarily to find out whether the levy is a fee or a tax. Of course, I cannot accept the solution which the hon. Member Sri Gajapathy Nayagar has suggested. In his Court it would probably have weighed with him—unfortunately he is no longer a Judge! But such an argument would not weigh with the Supreme Court. This is what the Supreme Court has observed: ' . . . in this case there is total absence of any co-relation between the expenses incurred by the Government and the amount raised by contribution under the provision of Section 76'. This is because some general rates are fixed and the amounts are collected without reference to any particular service."

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MR. CHAIRMAN :—" The question is—

' In the proposed new sub-section (1) of Section 76, after the words "such contribution" occurring in lines 5 and 6, add the words "at such rate as may be prescribed by him in proportion to the services rendered to the institution, not exceeding 5 per centum of its income" . . . "

The amendment was put and lost.

Clause 15 was put and carried.

Clause 16.

MR. CHAIRMAN :—" The motion is—

' That Clause 16 do stand part of the Bill.' "

* SRI T. M. NARAYANASWAMY PILLAI :—" Mr. Chairman, Sir, I move the amendment standing in my name, namely :—

' For the existing sub-clause (1) of section 82, substitute the following :—

" It shall be lawful for the Commissioner to levy and collect a contribution at the same rate as that prescribed in the previous sub-section for the period during which the Act

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from 1951 has been in force and to set off this against any claim for refund of the amount paid as contribution on the ground that the payment was illegal in pursuance of the decision of the Supreme Court."

"This is an amendment to Clause 16. The Government have provided in this clause for the validation of the contributions already made. The original Act, i.e., the impugned Act, came into force in 1951 and now we are bringing in a new Bill in 1954. From the year 1954 there will be provision for constituting a separate fund from these contributions to be administered by the Commissioner. The Commissioner will be the corporation sole. So, from the date on which the present amending Bill comes into force, there would be no merger of the amount raised by the Commissioner with the general revenues of the State. On the other hand, what was raised under the Act of 1951 has already been merged with the revenues of the State. No doubt, the Government are now proposing to give back that money to the fund but that will not render what was invalid as valid now. This tax was levied in pursuance of the provisions of that Act which has been held by the Supreme Court to be invalid. Our Legislature was not competent to pass that legislation. It was beyond its legislative competence to have passed that legislation. Therefore, the money collected under such a kind of legislation is illegal and now we cannot make it legal and valid. The powers of the Legislative Council have not been enhanced. The powers of the Council and the Assembly remain the same. Therefore, they cannot now validate what it was incompetent for them to do. There are only two ways by which we can validate it. We can do it if there is a procedural difficulty or if we are competent to pass that legislation giving retrospective effect to it. The provision contained in this clause does not come under any one of the categories. I am sorry, I have not brought that book, 'Commentary on the Constitution' where it is stated that a distinction has to be made between the case where the question of validity is raised on account of the incompetence of the Legislature and where the legislation is invalid on account of certain procedural difficulties. Therefore, where it is invalid for the reason that the Legislature itself was not competent, we cannot retrospectively legislate. Of course, I know the difficulty which would arise if that position is accepted. Therefore, it is only to enable the Government to get over the difficulty that I have moved this amendment. Sir, this Bill still gives the power of taxation to the Commissioner and there is nothing prohibiting the Commissioner to tax retrospectively for the period for which that old Act was in operation from 1951 to 1954.

"There is another section in that old Act which prevents the Commissioner from taxing with retrospective effect for more than three years. Fortunately that question does not arise at all and the tax has to be collected retrospectively, at the present rate which is the same rate as the old rate. Sir, if there is any claim,

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it must come from two kinds of people. There are people who have paid the tax illegally and those who have not paid it. It is only to meet such cases where the people who have already paid it claim for refund, I have provided in my amendment for the Commissioner to set it off against the amount that is due in the succeeding years. Sir, it is more a question of adjustment to meet the legal requirements and nothing more. It does not touch the powers of the Government or cause any inconvenience to courts. Perhaps two clerks will have to be deputed for this work. Therefore, I have moved the amendment and I request the Government to accept it and obviate further difficulties."

* SRI K. BALASUBRAMANYA AYYAR :—" I second it, Sir. While doing so, I want to add one or two words to what has fallen from my hon. Friend, Mr. Narayanaswamy Pillai. This Clause 16 introduced by the Government in this Bill cannot validate a thing which is beyond the competence of the Legislature to do and that is the difficulty. Therefore, the Government cannot achieve their purpose by merely making a provision in this clause. They cannot do it. What the legislature had done was held to be illegal by the Supreme Court and now the Government cannot make it legal. That is an impossible thing to do. Of course, the question of refund and administrative difficulties comes in and to meet such a contingency, my hon. Friend, Mr. Narayanaswamy Pillai, has suggested, in his amendment, that the Government should set off any claim for refund against the amount due in the succeeding years. That will make the whole thing quite all right. If any difficulties are experienced, we can get over them as and when they arise.

" Now, Sir, I come to Section 82 (1) in Clause 16 which says :

' Contributions under Section 76 (1) and further sums under Section 76 (2) shall be payable with effect from the commencement of this Act. For the period from the commencement of this Act until the commencement of the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 1954, the rate prescribed by the Government under Section 76 (1), or determined by the Commissioner under Section 76 (2), shall be deemed to be the rate prescribed or determined under Section 76 (1) or Section 76 (2), as the case may be, as amended by the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 1954, and contributions and further sums paid to the Government shall be deemed to be contributions and further sums, as the case may be, paid to the Commissioner under Section 76 (1) and Section 76 (2) as amended by the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 1954 ' (i.e., the present Bill).

The Government want to give retrospective effect. In other words, they want to push forward now what they had done in 1951, which has been declared illegal by the Supreme Court. It passes the comprehension of persons who have had some little legal training, how it is possible to validate a thing which is beyond the legislative competence of the Legislature. Therefore, I feel that this difficulty can only be obviated by accepting the amendment moved by my hon. Friend, Mr. Narayanaswamy Pillai."

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Mr. CHAIRMAN :—“ Amendment moved—

For the existing sub-clause (1) of Section 82, substitute the following :—

“ It shall be lawful for the Commissioner to levy and collect a contribution at the same rate as that prescribed in the previous sub-section for the period during which the Act from 1951 has been in force and to set off this against any claim for refund of the amount paid as contribution on the ground that the payment was illegal in pursuance of the decision of the Supreme Court ”. ”

* SRI K. BHASHYAM :—“ Mr. Chairman, Sir, the clause as it stands provides for another matter altogether and it is not intended merely for the purpose of validating the contributions already levied during the period prior to the passing of this Bill. The Government want to provide for cases where there is any liability standing against institutions in the form of contributions which they have not paid. Of course, Section 82 introduced in this clause is very obscure and it looks as if the Government have got power to do it. Therefore, I would like the Government to be more explicit and since it is a question of imposing a burden on the institution, this point should be made clear in this section. I hope this point will be taken into consideration by the Government. In this connexion, there is also another point to be considered by the Government, i.e., whether it is necessary or proper that they should rake up old matters and demand contributions which have not been so far collected under the old law. Of course, in the case of big temples having really large reserves, by all means let the Government collect them. But very often in many temples, the current expenditure swallows the current income altogether. Therefore, to say that they must pay arrears due in the previous years even by resorting to the attachment of the property of the temple, is not proper and just. I know two or three cases where the jewels of the God were attached for the purpose of collecting the contribution. The whole matter had to go to the Court. I would therefore like the Government to think about it twice before they levy contributions as regards arrears.” 4-54 p.m.

* THE HON. SRI B. PARAMESWARAN :—“ Sir, I do not think that the amendment proposed by the hon. Member, Sri T. M. Narayanaswamy Pillai, is in any way an improvement on sub-section (1) of section 82 proposed by the Government in Clause 16 of this Bill. This amendment of the hon. Member will not help us to validate a past levy, if it is illegal, any more than the Government's draft amendment. The Supreme Court objected to the levy of contribution being based on the income and the collections being merged in the Consolidated Fund of the State. The levy is likely to be upheld now that we are doing away with the grounds of this objection. As regards the objection that the contribution partakes of the nature of a tax, we have now met it because the moneys are not to be merged in the Consolidated Fund

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of the State but are vested in the Commissioner. I am opposing the amendment brought in by hon. Member, Sri T. M. Narayana-swamy Pillai, on the ground that the procedure suggested is cumbersome and will be difficult to work out in actual practice."

MR. CHAIRMAN :—" The question is—

' For the existing sub-clause (1) of Section 82, substitute the following :—

" It shall be lawful for the Commissioner to levy and collect a contribution at the same rate as that prescribed in the previous sub-section for the period during which the Act from 1951 has been in force and to set off this against any claim for refund of the amount paid as contribution on the ground that the payment was illegal in pursuance of the decision of the Supreme Court ".

The amendment was lost.

Clause 16 was put and carried.

Clauses 17 to 20 were put and carried.

Clause 1 and the Preamble were put and carried.

* THE HON. SRI B. PARAMESWARAN :—" Mr. Chairman, Sir, I move—

' That the Madras Hindu Religious and Charitable Endowments (Amendment) Bill, 1954 (L.A. Bill No. 27 of 1954), as amended, be passed into law.' "

MR. CHAIRMAN :—" Motion moved—

' That the Madras Hindu Religious and Charitable Endowments (Amendment) Bill, 1954 (L.A. Bill No. 27 of 1954), as amended, be passed into law.' "

* DR. V. K. JOHN :—" Mr. Chairman, Sir, may I say that two amendments having been passed in this House, this Bill has made history and that it has to go back to the Legislative Assembly. I hope, Sir, that this will be repeated in regard to the other Bills also. I would appeal again to the Hon. Minister who introduced this Bill and the Government that they should get every provision of this Bill carefully examined by competent legal advisers and see that they do not offend the provisions of the Constitution so that there may not be further litigation and further decisions of the High Court and the Supreme Court that certain sections of this Bill, when passed into law, are *ultra vires* of the Constitution."

* SRI M. P. GOVINDA MENON :—" Mr. Chairman, Sir, I associate myself with the sentiments expressed by the hon. the Deputy Leader of the Opposition that, for the first time, perhaps in the history of this Legislative Council the Opposition was able to press and win two amendments and this Bill is being sent to the

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other House. I hope similar incidents will be repeated here because we want to prove the usefulness of the Second Chamber as part of the Legislature of this State. On this ground, Sir, I am happy to associate myself with the hon. the Deputy Leader of the Opposition, Dr. V. K. John.

“ Further, Mr. Chairman, I heartily second this Amending Bill. In spite of eloquent speeches and persuasive powers of my hon Friends, Sri K. Bhashyam and Sri K. Balasubramanya Ayyar—I have great respect for them—I am not convinced that the State as a State cannot interfere in the secular administration of the religious and charitable institutions in this country. Of course, as a secular State, we do not want to interfere in religious matters but, as far as the secular properties of these religious institutions are concerned, the State and a democratic body such as the Legislature of the State, as representing the religious denominations concerned, have a right to interfere and protect the properties of the concerned institutions. The Legislature must interfere for the sake of protecting the properties concerned because the persons in-charge of them are trustees and as trustees they are accountable to the people concerned and the denominational worshippers concerned whose representatives we claim to be. So, we are entitled to pass such a legislation. My only complaint is that the Government have brought forward a very small piece of legislation. Of course, this Bill is intended only to meet the criticisms levelled against the Act of 1951 by the High Court and the Supreme Court and it contemplates remedial measures only as far as these criticisms are concerned.

“ Sir, I would like to request the Government to bring forward a comprehensive legislation not only for the Hindu religious institutions but also for all the denominations concerned. All religious institutions whether they be Hindu, Muslim or Christian must be under the control of the State as far as their secular administration is concerned. The Government have promised during the proceedings of the Joint Select Committee on this Bill that they would appoint a Committee to go into the question of a comprehensive legislation for these religious and charitable institutions. I hope they will carry out their promise and a very good, able and expert Committee will be appointed to go into this subject.

“ Mr. Chairman, we are now occasionally faced with certain difficulties. This freedom of ours was won by the common people of the country under very able leadership but all of us are now bound by the Constitution which became law on the 26th January 1950. It is not as if I have no respect for the Constitution—I have taken my oath of fealty to the Constitution as a Member of this House—but, I am afraid that the lawyers were responsible for this Constitution. The lawyers, I submit, are always inclined to look back and not look into the future. They are always striving to find out precedents for all things and are always trying to go backwards and not in the forward direction. I am afraid that very great, important and progressive legislations are now being blocked

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by certain Articles of the Constitution and I would like to warn the leaders of this country, as the ruling party is assured of a majority, that these problems relating to the Constitution should be tackled. In the name of Fundamental Rights great havoc is done in this country and nothing progressive could be done not only in regard to religious institutions but also in regard to land reform and other matters which affect the common man."

SRI K. BALASUBRAMANYA AYYAR :—" Mr. Chairman, Sir, on a point of order, may I submit that we are not now concerned with amending the Constitution."

* SRI M. P. GOVINDA MENON :—" Mr. Chairman, Sir, may I submit that even this Amending Bill before the House has been necessitated because certain provisions of the Constitution stood in the way and on account of the powers conferred on the Courts by those provisions. I want to make clear to those who are interested that certain broad constitutional reforms are necessary. In England, the House of Commons is supreme and it is said that the House of Commons could do everything and anything in the world except making a man into a woman or a woman into a man. The Parliament of England has absolute power. As far as our Constitution is concerned, the lawyer leaders have framed it in such a way that there is an impediment or obstacle everywhere. Perhaps, by this time in 1956, I am afraid the Constitution of Legislatures will be a different one and I want to tell my Friend, the Hon. Sri M. Bhaktavatsalam, the Leader of the House, that Travancore-Cochin will be repeated in every State in this country and no party will have absolute power in any legislature. This is the time to amend the Constitution and the sooner it is done the better it will be. Otherwise, the Constitution will be broken by the people of this country as nothing good can be done according to this Constitution and it has no right to exist. Therefore, Mr. Chairman, I would like to warn the leaders to look into the future very seriously and see that the necessary changes are made in the Constitution."

* SRI T. PURUSHOTHAM :—" Mr. Chairman, Sir, if I rise to say a few words before the Bill is passed by this House, it is only to impress that the Members on this side of the House are not in any way lacking in faith when they pushed forward this Bill in all its stages in spite of the remarks of hon. Members opposite. It was unfortunate that the hon. Member, Sri G. Krishnamoorthi, remarked that the purpose of this Bill was to pull down the madathipatis in the estimation of the public. Far from it, Sir, I would like to assure him and his friends that the purpose of this Amending Bill and the purpose of the Hindu Religious and Charitable Endowments Act as also the intention of the original framers of this legislation was to raise the madathipatis in the eyes of the public and also 'to reform the abodes of God on earth' using the words of the great Raja of Panagal who introduced this measure originally in this State. Sir, we are all religious-minded. Religion is ingrained

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in us. If a Bill of this kind has been brought forward, it is because we are anxious to reform, renovate and make the temples more attractive beaming with faith all round. It is in that spirit, my hon. Friend Sri T. M. Narayanaswami Pillai said that whenever he visited maths he used to prostrate before madathipatis. We are all very anxious that madadhipatis should conduct themselves in such a way that they command public respect and that there should be no room for criticism. It is to ensure that code of public conduct on the part of these madathipatis that some amendments have been proposed in this Bill. The Hon. Minister in charge of this Bill has pointed out very clearly that this Bill has been necessitated by the decision of the Supreme Court, and that for administrative reasons this measure has to be passed urgently. I am glad that the Hon. Minister has assured us that a comprehensive Bill will be introduced as early as possible. I hope it will not take too long in coming and that the Government will introduce such a measure without delay and that they will take steps early to set up the necessary machinery for the purpose. The Act as it stands lays too much stress on the administration of temples and little on the protection of temples and their properties. It was for the purpose of creating the necessary machinery for the protection of temples and the properties I introduced a Bill in this House as hon. Members are aware. As all Bills introduced by non-officials share the same fate, I could not successfully pilot the Bill through and it had to be dropped for want of the Governor's assent. I agree with the hon. Members who spoke before me that temples form a national treasure and should be preserved. I would propose that, as a result of the application of the *cypres* doctrine, a fund should be created from out of the surplus funds of the richer temples for the preservation of artistic treasures in the smaller temples. Such a sort of socialistic endeavour in the administration of temples would go a long way to solve the problem of preservation of temple art and architecture. I am sorry I have to oppose the view expressed by Sri T. M. Narayanaswami Pillai in this respect. I hope, when a consolidated measure is brought forward, all these aspects will be considered and that a central fund will be constituted for the richer temples to subsidize the smaller temples in the matter of their maintenance and preservation. With these words, I have great pleasure in supporting the motion before the House, namely, that the Bill be read a third time and passed."

* SRI K. BHASHYAM :—" Mr. Chairman, Sir, I am glad we have come to the end of our troubles and there is a feeling of relief. The hon. Member Sri M. P. Govinda Menon has criticized the Constitution in a somewhat sarcastic way. He said that lawyers were responsible for the Constitution. I must point out to him, who is himself a lawyer, that he is doing injustice, by saying so, to the lawyers. I have pointed out on more than one occasion that it is not a fact that the lawyers are responsible for the substance of the various Articles in the Constitution and they are responsible only for the wording in the various Articles. Our country is a vast

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country containing numerous communities and various interests. When the Constitution was framed, a certain amount of reconciliation was found necessary between the conflicting interests of the various communities. Therefore, it is not the fault of the lawyer if the Constitution does not satisfy some people. Policies were laid down by the politicians and politicians while laying down the policies had to reconcile the interests of the various irreconcilable elements. Politicians could have said that the management of Hindu temples could be left to Hindus, the management of Muhammadan temples to Muslims and so on. But they were not allowed to do so. They were asked to prepare one Article to cover all cases. Therefore, a certain ambiguity has arisen. I only want to clear the blame laid at the doors of the lawyers. The lawyers engaged in the drafting of the Constitution did only their duty like any other lawyer who is instructed to do a particular thing by his client. They did so to the best of their ability. I would also like to say, in this connexion, that the blame should not be laid on the Fundamental Rights provided for in the Constitution. Even the Fundamental Rights came to be included because of the conflict of various interests. For example, certain communities wanted the right to profess, practise and propagate religion freely, and for that purpose, a separate Article under the Fundamental Rights was provided in the Constitution. These rights are also provided in the American Constitution and the people of that country have not found any difficulty in working the Constitution. Here also we can work our Constitution similarly. In the initial stages, there may be some difficulties but in the long run our Constitution will not be found wanting in anything. Already the Government of India are thinking of making some amendments in the light of experience gained.

“ In respect of these legislations, I should like to say that they may be brought forward before this House in the first instance and then taken up to the other House. We are supposed to be a House of Elders, and Members of this House are supposed to be a little more experienced, a little more wise and a little more serious-minded people. Hon. Members in the other House are impatient of delays, and want to get through their work quickly. Besides, the other House is composed of Members representing various interests and political parties. I would like to submit to the Leader of the House that, in all these matters, Bills may be introduced in this House in the first instance. It happened in the last session that we wanted to move a certain amendment to a Bill. The Government thought that the amendment suggested was a reasonable one. But they could not agree to it because they had to send the Bill again to the other House and there would be a lot of inconvenience in that connexion. Even our veteran leader Sri C. Rajagopalachari said the same thing. I submit to the Leader of the House that Bills like the one before the House may, in the first instance, be brought forward before this House so that the views and opinions of Members of this House are made known to hon. Members of the other House in advance before the Bills are finally passed.

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"I feel very strongly that Government interference in religious matters is wrong. Government may say that there must be interference. But I ask, 'How far, and to what extent?' Their interference should not be for the purpose of pulling down the whole thing. Their interference should be for the purpose of enhancing the prestige of the institution. In a particular case what happened was this. Certain lands belonging to a math were leased out for 150 years and the lessees were not disturbed. The Commissioner of the Hindu Religious Endowments came in and said, 'Why do you keep these people for 100 or 150 years?' If you put the right to cultivate the lands in auction, you will get Rs. 200 more." The madathipathi said, "These people have been cultivating the lands for the last 100 or 150 years. Why do you disturb them?" But the Commissioner would not agree to it. Is that a change really to be made, I ask. In a certain place, there was a festival to carry the God along the streets. The Commissioner thought that instead of engaging persons to carry the idol, it would be cheaper to put it on a bullock cart and drag it. He thought it would be more efficient. He did so. There was protest from every side and the Commissioner agreed to retrace his steps. I am just pointing out that these are matters in which there is interference. Our present Commissioner is very considerate and I have read his speeches carefully. I am sure there would not be unnecessary interference. I therefore request the hon. Member Sri Govinda Menon to be reserved in his remarks."

5 p.m.

* THE HON. SRI B. PARAMESWARAN :—"Mr. Chairman, Sir, I congratulate the Hon. the Deputy Leader of the Opposition on the advantage he took of the absence of some hon. Members on this side. He was able to get the advantage of a snap vote. I have to mention this because both the hon. Member Sri Govinda Menon and the hon. Deputy Leader of the Opposition made reference to it.

"I have not come here to liquidate the temples and the religious and charitable institutions. I have come here to safeguard and protect the interests of the temples and those who are closely associated with those institutions. In the attempt of the Government to revive, preserve and maintain the prestige and glory of our ancient institutions, I request the unstinted co-operation of all hon. Members of this House and those whom they have the proud privilege of representing here. I am quite sure that the amendments that have been brought here will never endanger religion and will never retard the progress of the religious institutions. I am thankful to hon. Members for the manner in which they have offered their criticisms. Though we are not able to bring in a comprehensive legislation now, I can assure that the suggestions of hon. Members will be borne in mind when a comprehensive Bill is brought forth before the House. I once again thank hon. Members and you, Sir, for the indulgence shown to me."

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MR. CHAIRMAN :—" The question is—

' That the Madras Hindu Religious and Charitable Endowments (Amendment) Bill, 1954 (L.A. Bill No. 27 of 1954), as amended, be passed into law.' "

The motion was carried and the Bill was passed into law.

MR. CHAIRMAN :—" The House will now adjourn and meet again at 11 a.m. on Monday, the 16th August 1954."

The House then adjourned.

V.—PAPER LAID ON THE TABLE OF THE HOUSE.

Bill passed by the Assembly and received therefrom in the Council—

The Madras District Boards (Second Amendment) Bill, 1954 (L.A. Bill No. 31 of 1954).

